

REMARKS

Claims 11-21 were previously pending in the application. Claims 11-21 remain unchanged. New claims 22-42 are added. Claims 11 and 24 are independent.

Entry of this Amendment is proper because it does not raise any new issues requiring further search by the Examiner, narrows the issues on appeal, and is believed to place the present application in condition for immediate allowance.

Statement of the Substance of the Interview

Applicant's representative thanks the Examiner, Jason P. RIGGLEMAN, for the courtesies extended in the personal interview conducted with Applicants' Representative, John J. Dresch, Reg. No. 46,672, on December 30, 2009. An Interview Summary was mailed on January 8, 2010. Applicants submit this Statement to comply with the requirements of M.P.E.P. § 713.04.

In the interview, the following was discussed:

A. Identification of claims discussed:

Claims 11-21

B. Identification of prior art discussed:

Lutolf (FR2285838), Bolla (CH571852), Perry (US Patent No. 6003529).

C. Identification of principal proposed amendments:

None

D. Brief Identification of principal arguments:

The general operation of the device, including the "open end" limitation, "to-and-fro displacement movement". The terms "pressurized manner" vs. variable pressure was discussed.

The Examiner suggested that an extra drawing may be helpful.

Further, the dictionary definition of the term distributor as it applies to the device was discussed.

A machine translation of the Lutolf reference also was discussed.

E. Results of the Interview:

No agreement was reached.

Applicants note that new claims 22-42 are added to define more clearly the features of the invention discussed in the personal interview with the Examiner.

The Specification Objections

The disclosure is objected to because of informalities.

This Amendment amends paragraph [016] of the specification to include the language of claim 12, in accordance with the Examiner's helpful suggestions, thereby obviating this objection.

Applicants respectfully request withdrawal of this objection.

The Rejections under 35 U.S.C. § 112, second paragraph

The Office Action rejects claims 11, 13, and 20 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully traverse these rejections.

M.P.E.P. § 2173.02 sets out the standard for complying with 35 U.S.C. § 112, second paragraph:

The essential inquiry pertaining to the requirement under 35 U.S.C. § 112, second paragraph, is 'whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.'

The Office Action alleges that the phrase "and having two open ends via which rinsing liquid can be supplied in a pressurized manner" is not understood. In the Response to Arguments, the Office Action asserts that page 7, lines 27-32 does not clarify the phrase "pressurized manner" as recited in claim 11.

As explained in the personal interview, Applicants submit that, when considered as a whole and in the context of the claim and the specification, one of ordinary skill in the art certainly would know and understand the meaning of “the at least one spray channel having, on a side directed towards the interior of the rinsing container, openings for the passage therethrough of the rinsing liquid and having two open ends via which rinsing liquid can be supplied in a pressurised manner.” Emphasis added.

For example, the specification very clearly describes an exemplary aspect in which the spray channels 3 each have two open ends wherein the open ends of the spray channels 3 on one side open into a first distributor 5 and the open ends of the spray channels 3 on the opposite end open into a second distributor. A pressurized rinsing liquid is supplied to the spray channels 3 (i.e., supplied in a pressurized manner). See, e.g., page 3, lines 11-28; page 4, lines 6-32; page 5, lines 10-18; page 7, lines 21-32, page 8, lines 1-4.

Applicants submit that one of ordinary skill in the art certainly would understand that a pressurized rinsing liquid or supplying a rinsing liquid in a pressurized manner means that the rinsing liquid is supplied under pressure. See, e.g., page 4, lines 6-13. Indeed, one of ordinary skill in the art, and particularly in the field of dishwashers, certainly would know and understand that pressurized rinsing liquid (i.e., rinsing liquid under supplied pressure) can be supplied to the spray channels such that the rinsing liquid is sprayed from the openings in the spray channels.

Thus, one of ordinary skill in the art reasonably would be apprised of the scope of the invention, and claim 11 is clear and definite.

Regarding the statement in the Office Action that a second distributor is not in claim 11 and is an alternative embodiment, Applicants respectfully submit that this statement does not appear to have any bearing on the definiteness of claim 11. Claim 11 clearly recites “at least one distributor” and the description in the specification of a first distributor 5 and a second distributor would only serve to further support the understanding of one of ordinary skill in the art. See, e.g., page 3, lines 11-28; page 4, lines 6-32; page 5, lines 10-18; page 7, lines 21-32, page 8, lines 1-4.

The Office Action asserts that the phrase "is one of a plurality of spray channels that are aligned parallel to one another at least on the bottom of the rinsing container" is not understood. Also, in the Response to Arguments, the Office Action asserts, regarding claim 20, the Applicant allegedly has referred to a verbatim quotation of the claim in the specification to argue that the claim is no indefinite. Applicants respectfully submit that this simply is not the case. Considered in its entirety, claim 20 clearly recites that the at least one spray channel is one of a plurality of spray channels that are aligned parallel to one another at least on the bottom of the rinsing container. That is, the claimed spray channel is one of a plurality of spray channels. The plurality of spray channels are aligned parallel to one another at least on the bottom of the rinsing container. The specification very clearly describes these features and the language of the claim corresponds to the description in the specification. See, e.g., page 6, lines 8-31; page 7, lines 1-2 and 9-10.

Thus, Applicants respectfully submit that one of ordinary skill in the art would be reasonably apprised of the scope of the invention, and claim 20 is clear and definite.

Regarding claim 13, the Office Action asserts that the term "pressurized manner" in claim 13 is a relative term which renders the claim indefinite. The Office Action asserts that the term "pressurized manner" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The Office Action asserts that the applicant appears to be calling a plate-type valve feeding a manifold a "distributor".

Applicants respectfully submit that one of ordinary skill in the art certainly would know and be reasonably apprised of the scope of the invention, including the at least one distributor has at least one opening through which rinsing liquid can be supplied in a pressurized manner via an open end of the spray channel, as recited in claim 13.

As explained above, the specification very clearly describes an exemplary aspect in which the spray channels 3 each have two open ends wherein the open ends of the spray channels 3 on one side open into a first distributor 5 and the open ends of the spray

channels 3 on the opposite end open into a second distributor. A pressurized rinsing liquid is supplied to the spray channels 3 (i.e., supplied in a pressurized manner). See, e.g., page 3, lines 11-28; page 4, lines 6-32; page 5, lines 10-18; page 7, lines 21-32, page 8, lines 1-4.

One of ordinary skill in the art certainly would understand that a pressurized rinsing liquid or supplying a rinsing liquid in a pressurized manner means that the rinsing liquid is supplied under pressure. See, e.g., page 4, lines 6-13. Indeed, one of ordinary skill in the art, and particularly in the field of dishwashers, certainly would know and understand that pressurized rinsing liquid (i.e., rinsing liquid under supplied pressure) can be supplied to the spray channels such that the rinsing liquid is sprayed from the openings in the spray channels. See, e.g., page 3, lines 11-28; page 4, lines 6-32; page 5, lines 10-18; page 7, lines 21-32, page 8, lines 1-4.

For at least these reasons, Applicants respectfully submit that one of ordinary skill in the art would be reasonably apprised of the scope of the invention, and claims 11, 13, and 20 are clear and definite.

Applicants respectfully request withdrawal of this rejection.

The Claimed Invention

An exemplary embodiment of the claimed invention, as recited by, for example, independent claim 11, is directed to a dishwasher comprising a spray device for spraying rinsing liquid into the interior of the rinsing container, the spray device including at least one spray channel for guiding a rinsing liquid and at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel, the at least one spray channel having, on a side directed towards the interior of the rinsing container, openings for the passage therethrough of the rinsing liquid and having two open ends via which rinsing liquid can be supplied in a pressurised manner.

Many conventional dishwashers include spray devices which operate with rotating spray arms. In many cases, the corner areas of the rinsing container are not adequately sprayed with rinsing liquid by the rotating spray arms, since the rotating spray

arms have a circular range of action, while the rinsing container commonly is rectangular. Moreover, items to be washed in the dishwasher can interfere with the rotating spray arms, thereby limiting operation of the dishwasher, the arrangement of items in the dishwasher, and the use of space within the dishwasher. Such spray devices commonly produce only uniform spray jets which may be insufficient to adequately clean the items to be rinsed.

In stark contrast, the present invention provides a dishwasher with a space-saving spray device that has no moving spray arms, thereby minimizing breakdowns associated with such moving parts, eliminating interference between the spray device and the arrangement of items in the dishwasher, and improving the use of space within the dishwasher.

The present invention also provides a spray device in which the rinsing liquid is sprayed in the rinsing container as uniformly as possible to efficiently act upon the items to be rinsed with rinsing liquid, can produce variable spray jets in order to improve the cleaning effect of the items to be rinsed, and can provide different spray patterns. Moreover, the present invention provides a spray device that can be configured in almost any shape to correspond to any shape of the rinsing container, as well as on one or more of the bottom, sides, and top of the rinsing container. See, e.g., page 1, lines 25-29; page 2, lines 13-32; page 3, lines 1-9; and page 5, lines 13-18.

The Rejections under 35 U.S.C. § 102

In the Office Action, claims 11, 14-15, 18, and 20 rejected under 35 U.S.C. § 102(b) as being anticipated by the Lutolf reference (FR2285838). Applicants respectfully traverse this rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [...] The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131.

Applicants respectfully submit that the Lutolf reference does not disclose the features of the claimed invention a spray device including at least one spray channel for guiding a rinsing liquid and at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel, the at least one spray channel having, on a side directed towards the interior of the rinsing container, openings for the passage therethrough of the rinsing liquid and having two open ends via which rinsing liquid can be supplied in a pressurised manner, as recited by independent claim 11.

These features are important for providing a space-saving spray device that has no moving spray arms, thereby minimizing breakdowns associated with such moving parts, eliminating interference between the spray device and the arrangement of items in the dishwasher, and improving the use of space within the dishwasher, while also providing uniform spraying, producing variable spray jets and different spray patterns, and providing a spray device that can be configured in almost any shape to correspond to any shape of the rinsing container. See, e.g., page 1, lines 25-29; page 2, lines 13-32; page 3, lines 1-9; and page 5, lines 13-18.

The Office Action alleges that the Lutolf reference discloses distributors 80, 60, and that the pressure allegedly is variable by means of the distributors. In the Response to Arguments, the Office Action asserts that, even if the valves 60, 80 are merely check valves, such valves 60, 80 allegedly still regulate the supply of rinsing liquid. Therefore, the Office Action states that these rejections are maintained.

Applicants submit that, contrary to the assertions in the Office Action, the Lutolf reference very clearly does not disclose these features. Indeed, the Lutolf reference very clearly fails to disclose at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel, as recited in claim 11. Moreover, the Lutolf reference very clearly fails to disclose that the pressure is variable by means of the check valves 60, 80, which are compared to the claimed distributor.

Instead, as shown in the Figure, the Lutolf reference discloses check valves or one-way valves 60, 80, which simply allow flow in a single direction. Based on a computer translation of the Lutolf reference obtained from the European Patent Office

web site, the valve symbols used for 60, 80 in the Figure are consistent with the description of the Lutolf reference, which describes that the liquid flows only from pipes 55 and 77 through check valves 60, 80 respectively toward the shower pipes 3.

Contrary to the Examiner's position, the check valves 60, 80 of the Lutolf reference do not regulate the supply of rinsing liquid to the spray channel. The check valves 60, 80 permit the rinsing liquid to be supplied unimpeded or unregulated into the pipe system 3 in the supply direction. The check valves 60, 80 simply restrict flow back from, or out of, the pipe system 3 toward the pipes 55 and 77, respectively.

The Lutolf reference clearly does not disclose that the pressure at which the rinsing liquid is supplied to the spray channel is variable. Indeed, the check valves 60, 80 are not capable of varying the pressure of the rinsing liquid. Absent the addition of some other device, the check valves 60, 80 themselves cannot vary the pressure in the spray channels. Hence, the check valves 60, 80 do not disclose a distributor as claimed.

Moreover, the Lutolf reference very clearly fails to disclose the at least one spray channel [...] having two open ends via which rinsing liquid can be supplied in a pressurised manner, as recited by independent claim 11. As shown in the Figure, the Lutolf reference discloses a closed system of spray channels 3. The ends of the spray channels 3 are not open. Rather, the ends of the spray channel 3 are fixed to the check valves or one-way valves 60, 80. Hence, the Lutolf reference does not anticipate the features of claim 11.

Applicants respectfully request withdrawal of this rejection.

The Rejections under 35 U.S.C. § 103

In the Office Action, claims 12, 13, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lutolf reference in view of the Bolla reference (CH571852). Claims 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lutolf reference. Claims 12, 13, 16, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Lutolf reference in view of the Perry reference (US 6,003,529).

Applicants respectfully traverse these rejections.

Applicants respectfully submit that none of the applied references discloses or suggests the features of the claimed invention as recited by independent claim 11, for the reasons set forth above. Moreover, none of the applied references discloses or suggests the features of at least dependent claims 12, 13, 16, 17, and 19.

The Office Action specifically acknowledges that the Lutolf reference lacks the teaching of the to-and-fro movement of the distributor in alternating directions and the drive means, for example, as recited in claim 12. However, the Office Action asserts that either the Bolla reference or the Perry reference makes up for the deficiencies of the Lutolf reference regarding claims 12, 13, 16, and 17.

Applicants respectfully submit that one of ordinary skill in the art would not have had an apparent reason to combine the disclosure of the Lutolf reference with the disclosure of the Bolla reference, or the disclosure of the Lutolf reference with the disclosure of the Perry reference, to arrive at the claimed invention as a whole. Moreover, the Office Action does not establish an adequate rationale for making such a combination.

Instead, regarding the Bolla reference, the Office Action makes the conclusory statement that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lutolf reference with the Bolla reference to create a dishwashing machine with an alternating spray pattern to achieve the expected result. Emphasis added Applicants. The Office Action fails to provide any support for these conclusions.

Applicants respectfully submit that such conclusory statements are insufficient to provide a prima facie case for obviousness because the Office Action fails to provide an adequate rationale for modifying the prior art as required by KSR International v. Teleflex Inc. 82 U.S.P.Q. 2d 1385 (2007).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale

underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in KSR).

The Office Action fails to articulate reasoning with any rationale underpinning to support a legal conclusion of obviousness of the claimed invention. As such, Applicants respectfully submit that the Office Action fails to present a prima facie case for obviousness. The Office Action has provided no articulated reasoning to modify the Lutolf reference to arrive at the claimed invention.

In the Response to Arguments, the Office Action points to the Deuser et al. reference (UK Patent Application Publication No. 2003840), which has not been applied against the claims of the present application. The Office Action appears to rely on the Deuser et al. reference for a teaching of knowledge within the skill in the art to illustrate the alleged pervasive use and motivation for alternating spray patterns -- in particular for washing 3-D objects such as containers.

Applicants respectfully submit that the Deuser et al. reference does not make up for the deficiencies of the alleged combination of the applied references. Particularly, none of the applied references, including the Deuser et al. reference, discloses or suggests wherein the at least one distributor is mounted to be movable relative to the at least one spray channel in a selected one of a to-and-fro displacement movement in alternating directions and a movement that is not a to-and-fro displacement movement in alternating directions, as recited in claim 12. Applicants respectfully submit that obviousness of the specific features recited in the claims cannot be established merely by a general assertion that the prior art teaches varying spray patterns absent some showing that the actual claimed features are disclosed by, or rendered obvious from, the prior art.

Thus, even assuming in *arguendo* that the teaching of the Deuser et al. reference suggests the pervasive use and motivation for alternating spray patterns, in particular for washing 3-D objects such as containers, the Office Action has not provided any articulated reasoning to modify the Lutolf reference to arrive at the claimed invention, in which the at least one distributor is mounted to be movable relative to the at least one spray channel in a selected one of a to-and-fro displacement movement in alternating

directions and a movement that is not a to-and-fro displacement movement in alternating directions, as recited in claim 12.

Claim 13 recites the arrangement of the at least one opening of the at least one distributor and an open end of the spray channel, which also clearly is not disclosed or rendered obvious from the applied references or prior art in general.

Claim 16 recites drive means for driving the at least one distributor in a periodic movement. The Office Action asserts that the Bolla reference discloses a drive means for driving the distributor in periodic movement, but does not cite any support or provide an explanation for this assertion.

With respect to claim 17, the Office Action acknowledges that the combination of the Lutolf reference and the Perry reference does not disclose the claimed at least one distributor includes a drive slot and the drive means includes a rotary disk and a cam arranged thereon, which engages in the drive slot formed in the at least one distributor. To make up for these deficiencies, the Office Action makes the conclusory statement that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lutolf reference with the Perry reference to create a dishwashing machine with an alternating spray pattern to achieve the expected result. Emphasis added Applicants. The Office Action fails to provide any support for these conclusions.

Applicants respectfully submit that such conclusory statements are insufficient to provide a prima facie case for obviousness because the Office Action fails to provide an adequate rationale for modifying the prior art as required by *KSR International v. Teleflex Inc.* 82 U.S.P.Q. 2d 1385 (2007).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*).

The Office Action fails to articulate reasoning with any rationale underpinning to support a legal conclusion of obviousness of the claimed invention. As such, Applicants respectfully submit that the Office Action fails to present a prima facie case for

obviousness. The Office Action has provided no articulated reasoning to modify the Lutolf reference to arrive at the claimed invention. Applicants respectfully submit that obviousness of the specific features recited in the claims cannot be established merely by a general assertion that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Lutolf reference with the Perry reference to create a dishwashing machine with an alternating spray pattern to achieve the expected result, absent some showing that the actual claimed features are disclosed by, or rendered obvious from, the prior art.

In this case, neither the applied references nor the prior art in general discloses that at least one distributor includes a drive slot and the drive means includes a rotary disk and a cam arranged thereon, which engages in the drive slot formed in the at least one distributor, as recited in claim 17. These features are important for providing the to-and-fro movement in alternating directions. See, e.g., page 5, lines 20-24; page 7, lines 27-32, and page 8, lines 1-4, and lines 18-25.

For at least the foregoing reasons, none of the applied references discloses or suggests the subject matter defined by claims 12, 13, 16, 17, and 19.

Applicants respectfully request withdrawal of these rejections.

New Claims

New claims 22-42 are added to define more clearly the features of the invention as discussed in the personal interview with the Examiner. No new matter is added. See, e.g., page 4, line 15 to page 5, line 18; page 6, lines 8-16 and 24-27; page 7, lines 21-32; page 8, lines 1-31; and page 9, lines 1-7.

None of the applied references discloses or suggests the subject matter defined by these claims for at least the same reasons as claim 11 above, as well as for the additional features recited therein.

Applicants respectfully request allowance of these claims.

CONCLUSION

In view of the above, entry of the present Amendment and allowance of claims 11-42 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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